

delivering an upward flow of water having an apex located substantially on the vertical axis, wherein raising the striking means relative to the apex decreases the production of tones of random sequence and degree and lowering the striking means increases such production of tones. It also appears that the Examiner alleges the Christensen Patent discloses a means for adjustable suspension of the striking means along the vertical axis, wherein elevating or lowering the striking means relative to the apex has the same effect in the production of tones.

PATRUZZI PATENT

To support the Examiner's position in reference to Petruzzi, the Examiner refers to Fig. 2 wherein Petruzzi discloses the plurality of bell-shaped chimes that are excited by the movement of water about the chimes. The chimes are attached to a plurality of tiers to form the assembly of water activated chimes. When the water is pumped upward through aperture (26), it forms an apex along the vertical axis, only to flow downward about the plurality of tiers, including discrete channels. When the water intermittently passes the chimes, they become excited by the movement of the water. Tones are produced by the excited chimes striking each other or the plurality of tiers. Essential to Petruzzi, is the design of the channels throughout the tiers and delivery of the downward force of flowing water in order to excite the chimes. In Petruzzi, Column 2, beginning at line 61 and illustrated in Fig. 2, it is clear that raising or lowering the striking means relative to the apex fails to have an effect of increasing or decreasing the production of tones of random sequence and degree. According to Fig. 2 and the disclosure, it is the discrepancy in the volume of downward flowing water over the tiers that can increase or decrease the production of tones of random sequence and degree. This discrepancy is regulated

by the design of the channels throughout the tiers, so that lowering the striking means relative to the apex can decrease rather than increase production of tones of random sequence and degree. This occurs where the volume and force of flowing water is lessened by the design of the channels. Furthermore, Petruzzi fails to suggest or disclose a means for delivering an upward flow of water having an apex to the striking means as instantly claimed. In fact, Petruzzi teaches away from the instant claims because Petruzzi depends upon delivery of the downward force of flowing water to excite the chimes. Thus, Petruzzi is based upon an entirely different inventive concept, than instantly claimed; and even when combined with Christensen for modification to incorporate the free hanging striking means on the vertical axis, this cannot function to produce tones because there is no adjacent resonating means as instantly claimed.

CHRISTENSEN PATENT

The Examiner acknowledges that Petruzzi fails to disclose the use of a free hanging striker suspended along a vertical axis adjacent to the reasoning means for striking the resonating means. For the reasons below, this failure is not cured by the disclosure in Christensen for purposes of obviousness.

The Examiner alleges that it would be obvious to the artisan to modify Petruzzi with the free hanging striker of Christensen suspended along the vertical axis of Petruzzi. Applicant disagrees. In order to modify the device of Petruzzi with the free hanging striker in Christensen, one would have to disregard the teaching in Petruzzi, which relies upon delivery of the *downward* force of flowing water to the striking means. In unobvious contract, the instant claimed invention uses the delivery of the *upward* force of flowing water to the striker at the

apex. It would be inconsistent with Petruzzi to use a free hanging striker over the apex when the upward force of flowing water through aperture (26) serves no purpose other than to redirect the force downward for the water to flow over the tiers and excite the chimes.

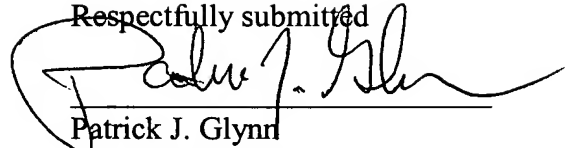
Furthermore, Applicant respectfully disagrees with the Examiner that Christensen discloses an adjustable striking means, especially in reference to Column 5, lines 25-40. There is no such disclosure. In point of fact in the very Column 5, lines 25-40 cited by the Examiner, Petruzzi teaches against using an adjustable suspension means by disclosing the criticality of having the pendulum assembly “in close enough proximity to the drive electromagnet pole piece such that there is a strong attractive force between the driven magnet (15) and the iron pole piece of the drive magnet (18) when the electromagnet is not energized.” Therefore, once this position is established, such as, with a cord length of 20.5 inches in Column 4, line 8, raising or lowering the suspension means relative to the drive magnet (18) by adjustable means can disturb this proximity. Increasing or decreasing the production of tones of random sequence and degree is preferably accomplished rather by adjustments to the drive magnet electronics disclosed in Column 6, lines 31-48. Applicant submits therefore the references themselves do not suggest they be combined. The mere fact that the prior art could be modified or be capable of being modified to meet the instant claims would not have made the modification obvious unless the prior art suggested the desirability of the modification. *In re Laskowski*, 10 USPQ 2d 1397.

Lastly, the fact that Christensen discloses the use of chimes in a chamber formed by a housing wherein the framework supports and unifies the elements, does not render the instant claims obvious in light of the deficiencies in the references as pointed out above.

Based on the foregoing, Applicant requests the rejection be withdrawn and early

allowance of the claims.

Respectfully submitted



Patrick J. Glynn

Reg. No. 33,889

818 East University Blvd.

Suite 129

Dallas, TX 75206

Telephone: (214) 369-1623

Facsimile: (214) 368-6966

CERTIFICATE OF MAILING

I hereby certify that the above-noted paper is being deposited with the United States Postal Service, addressed to Commissioner for Trademarks, 2900 Crystal Drive, Arlington VA 22202-35133, Box Non-Fee Amendment on September 15, 2005.


Patrick J. Glynn